

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of Vonage Holdings Corporation Petition for a Declaratory Ruling
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WC Docket No. 03-211

REPLY COMMENTS OF VERIZON

The comments on Vonage's petition show almost universal support for a comprehensive Commission examination of all the legal and public policy issues raised by VoIP services. The Commission has indicated that it intends to start such a proceeding after its VoIP forum on December 1st. But even more important than starting such a process is completing it, and completing it quickly. If the Commission does not act, it will render itself irrelevant, with the states and the courts making piecemeal decisions in an area Congress entrusted to the Commission.

But the Commission should not wait until that proceeding is concluded to resolve an easy issue that is already before it and ready for resolution. AT&T has asked the Commission to declare that a phone-to-phone telephone service it provides is an information service and exempt from access charges just because it uses Internet protocol at some point in the transmission of the call. Verizon and others have shown that this position is insupportable, and the Commission should quickly put this matter to rest. And, of course, to the extent that Vonage or any other voice telephony provider uses a LEC's switched services, it should pay access charges as well.

As to the larger issues, it would be irresponsible of the Commission to take a wait-and-see approach to VoIP — "Let's see what happens in the marketplace before deciding what to do." Service providers need to know what rules apply to them, and they need to know what rules

apply to their competitors and customers. The industry needs these answers so that firms can make decisions about investment, technology and deployment. With regulatory clarity, the industry can make informed investment decisions. Without it, firms may over-invest in VoIP by guessing wrong about the outcome of regulatory proceedings or under-invest and deny consumers the full benefits of competitive VoIP services. If the new technology makes it possible for the Commission to impose lesser regulation on all providers — and Verizon strongly believes that it does — the Commission should start to remove those burdens sooner rather than later. But what the Commission should not do is let matters continue to drift, unresolved, until events have overtaken it and made it more difficult to set policy.

After the general agreement that Commission action is required, most commentators take one of two positions. The first supports Vonage's request for preemption and its claim that its service is an information service. The second opposes preemption and says that Internet telephony is a telecommunications service. Each group is partially right — the Commission should preempt and establish a consistent national policy, and under the Act and the Commission's decisions Vonage's service is nothing more than telecommunications.

The Commission has explained how to tell a telecommunications service from an information service:

[I]f the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service.¹

The proponents of classifying Vonage's offering as an information service generally ignore this straightforward functional approach because it defeats their claim; Vonage does not offer

¹ *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501 ¶ 59 (1998).

“enhanced functionality, such as manipulation of information and interaction with stored data” — it offers the consumer plain old telephone service.

By Vonage’s own description of its service, it must be telecommunications under the Commission’s approach. “The Broadband Phone Company”² says that its service “is like the home phone service you have today — only better!”³ and that you “use Vonage like you use any telephone” — “You pick up the phone, dial the number and it connects to whom you’re calling.”⁴ In fact, “Vonage is an all-inclusive home phone service that replaces your current phone company.”⁵ Vonage is not offering an information service, which uses telecommunications to provide the customer with something more than telecommunications, it is providing only telecommunications itself.

Some commentators disagree with the Commission’s approach — they say that the Commission should not focus on what functionality the consumer receives, but rather on how the service works or what it’s made of. “While a rubber duck might look like a duck and quack like a duck, it nonetheless would not have the internal organs of a duck and could not lay duck eggs. Nor could it grow duck down.”⁶ But that approach makes no sense. The consumer doesn’t know or care about the “internal organs” of the service — whether it is IP or circuit switched; the consumer knows and cares only that she can make a telephone call.

² E.g., <http://www.vonage.com>.

³ http://www.vonage.com/learn_tour.php.

⁴ http://www.vonage.com/learn_howitworks.php.

⁵ http://www.vonage.com/learn_tour.php.

⁶ Collinge at 1.

Like Vonage, many of its supporters base their argument that Vonage's service is enhanced on the fact that Vonage performs a "net protocol conversion."⁷ As Verizon noted, however, many Vonage calls — those between Vonage subscribers — involve no protocol conversion at all, and it is unclear under what possible theory these calls would be enhanced.

But, more fundamentally, these commentators ignore the *Computer Inquiry* precedent. The Commission explained when it adopted the basic-enhanced dichotomy that it was trying to separate "computer processing activities" from communications and to "not extend the arm of regulation to data processing services."⁸ It was not trying to create different categories of communications services. Vonage's service is certainly not data processing. Moreover, the Commission's explanation at the time makes it clear that all voice telephony services are basic, as the Commission's goal was "the establishment of a regulatory structure under which carriers can provide 'enhanced non-voice' services free from regulatory constraints as to the communications or data processing nature of the service."⁹

Other commentators say that VoIP services can offer more than just transmission, such as "playing announcements and tones, performing speech recognition, presence monitoring, click access, VIP list creation, unified messaging, conferencing, number translation, find-me, barring,

⁷ E.g., Motorola at 8-9; High Tech Broadband Coalition at 2; 8x8 at 11.

⁸ *Second Computer Inquiry*, Tentative Decision and Further Notice of Inquiry and Rulemaking, 72 F.C.C.2d 358, ¶ 60 (1979) ("*Tentative Decision*").

⁹ *Tentative Decision* ¶ 71.

and forwarding services.”¹⁰ While this may be true, Vonage’s petition does not suggest that it is doing any of these things, nor does its web site promote such features. Moreover, most of these features are not information or enhanced services anyway, and carriers have been playing announcements and tones, conferencing, number translation, find-me, barring, and forwarding services for years.

MCI/CompTel argues that “the broken intercarrier compensation system should not apply to the Internet.”¹¹ Whether or not the current system is in need of “radical reform,” it is the law, and it must be applied. In addition, assessing access charges when a VoIP provider uses the public switched network to originate or terminate telephone calls is not applying the current system “to the Internet” — it is just continuing to apply it to use of the PSTN. Finally in this connection, MCI/CompTel’s claim that “the Commission’s long-standing refusal to subject enhanced service providers to the access charge regime was based on its understanding that the regime had become so irrational”¹² is nonsensical. The Commission adopted the ESP exemption in 1983, as part of its establishment of the access charge regime; the ESP exemption was not a reaction to anything that the system had become.

The other issue raised by Vonage is jurisdiction. Many of the opponents of Vonage’s position that its service is interstate point back to traditional Commission analyses of jurisdictional questions.¹³ These arguments ignore the fundamental difference in Vonage’s service — namely, that Vonage’s service is enabled by and dependent on broadband Internet

¹⁰ *E.g.*, Level 3 at 7.

¹¹ MCI/CompTel at 13.

¹² MCI/CompTel at 13.

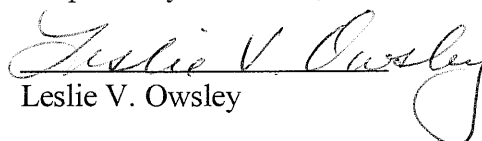
¹³ *E.g.*, NASUCA at 13.

access services, which the Commission has found to be interstate. Treating broadband access services, which arguably look more “intrastate” than Vonage’s service, as interstate while at the same time giving the states regulatory jurisdiction over Vonage’s service but not broadband access makes no sense. Moreover, as Verizon and others have pointed out,¹⁴ it may be impossible to tell whether individual calls originate and terminate in the same state or in different states, making it all the more appropriate for the Commission to assume jurisdiction.

The Commission should promptly open, and complete, a comprehensive proceeding on VoIP. At that time, it should confirm that Vonage is providing a “telecommunications service,” as defined in the Act, but one that is jurisdictionally interstate. While there is no reason for the Commission to subject such services to economic regulation under Title II, Vonage, as a telecommunications service provider, should pay for the use of other carriers’ networks in the same way as other telecommunications service providers.

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¹⁴ E.g., WGA at 5; Cicso Systems at 4-5.